

### III. ADDITIONAL SERVICES

A. The Company shall directly bill Subscribers at its then current installation and monthly service rates for all other connections and services made or rendered beyond the Bulk Service for the primary outlet, including, without limitation, additional or relocated outlets (including the relocation of the primary Bulk Service outlet), additional converters, monthly premium or pay television services, pay-per-view and any other services or charges ("Additional Services"). Client shall have no responsibility under this Agreement for any payments for such Additional Services.

B. The Company may deny Additional Services to, or take lawful action against any Subscriber who fails to pay, when due, any amount lawfully payable with respect to installation or lost converter fees or services of the Company.

### IV. CONSTRUCTION AND INSTALLATION

A. The Company may, where necessary, install television cables, wires, amplifiers, converters, equipment and appurtenant devices through, in or on the Premises, and may enter or exit from the Premises with all equipment necessary for the provision of services by the Company to the Premises or to other buildings in the area. All work by the Company will be done with reasonable care and in a workmanlike fashion.<sup>4</sup>

B. The Company shall be responsible for any damage to the Premises resulting from its work. Such work will comply with all applicable laws, codes and municipal regulations, and the Company will procure, prior to commencing work, and at its own expense, all permits necessary to perform said work. All work done by the Company on the Premises will be in accordance with all union jurisdictional rules.

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<sup>4</sup> [Should the Client request internal wiring, the parties will negotiate language to ensure that the Company will be guaranteed access necessary to provide prompt and efficient service. That language will include a statement that the agreement is subject to and contingent upon receiving prior approval by the DTE of any plan for internal wiring.]

C. Client shall provide the Company with reasonable access to the Premises for building, maintaining, services, replacing and relocating the cable television system at the Premises (the "System") which the Company has the exclusive right to do and which it shall do at its own cost and not at the cost of Client.

D. Neither Client nor anyone acting by or under the authority of Client shall at any time service, maintain, tamper with, make any alterations to, interconnect with, interfere with, disconnect or remove or knowingly permit any person who is not authorized by the Company to service, maintain, tamper with, make any alterations to, interconnect with, interfere with, disconnect or remove any part of any device, cable, wire, equipment or material installed by the Company.

#### V. NEW TECHNOLOGY

Client understands that the Company is currently rebuilding its cable television system pursuant to: (1) an Upgrade Plan for Cable Television Systems in Manhattan which was adopted by the New York City Board of Estimate on January 22, 1987 and (2) a Resolution, Calendar No. 55-A of the Board of Estimate of the City of New York Consenting to the Transfer of Control of the Company adopted by the Board of Estimate on June 15, 1989. This rebuilding includes rewiring buildings. Client shall provide the Company with reasonable access for servicing, replacing and relocating the System including rewiring the Premises in accordance with such rebuild or any subsequent rebuild or any other necessary rewiring.

#### VI. OWNERSHIP OF EQUIPMENT

A. All equipment (including, without limitation, cables, amplifiers and converters) installed or supplied by the Company pursuant to this Agreement or in connection herewith, shall remain the property of the Company. Nothing herewith, shall be deemed to create any property interest in any such equipment in Client, Subscriber or any other person.

B. Client shall be liable to the Company for the cost of replacement of any converter and remote control unit to provide Subscribers with the first connection for Bulk Service if such converter and remote control unit is damaged, stolen, lost or disappears for any other reason. Client shall not be liable for

the damage, loss, theft or disappearance of any additional converters and remote control units which were installed at the Subscriber's request.

VII. CHANGES OF RESIDENTS OR APARTMENT COUNT

A. In the event that a Subscriber moves out of or sublets an apartment, Client shall furnish the Company with the name of the new resident or sublessee of such apartment as soon as Client learns of such change. Client shall provide each such new resident with a copy of the Company's Notice of Bulk Service Customer Rights.

B. Client shall have the responsibility to remove and store the converter installed for Bulk Service from an apartment that has been vacated and shall be responsible for any necessary replacement if lost or damaged while in Client's possession.

C. Client shall notify the Company of any change in unit count as soon as owner learns of such change.

VIII. NOTICES

All notices shall be in writing delivered by certified mail, return receipt requested, to the appropriate party at its address set forth below:

Client: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Time Warner Cable of New York City  
120 East 23rd Street  
New York, New York 10010

Attention: Vice President of  
Corporate Development

cc: Office of the General Counsel;

[Paragon Cable Manhattan  
5120 Broadway  
New York, New York 10034

Attention: Vice President of Marketing

cc: Office of Counsel]

**IX. TERM**

A. This Agreement shall remain in full force and effect for five (5) years. Either party may terminate this Agreement upon three (3) months prior written notice.

B. Termination of this Agreement shall not effect (1) any rights the Company may have under applicable laws or regulations to install, maintain, replace and/or relocate its wires, conduits, cables, amplifiers, converters and all appurtenant devices, into, out of, across, through, over or under the Premises or (2) the ownership by the Company of any equipment installed by it.

**X. GOVERNING LAW**

A. This Agreement is subject to (1) all applicable laws, rules or regulations of the United State, New York State and the City of New York and the agencies thereof, and (2) the Franchise Agreement dated June 28, 1990 between the Company and the City of New York, as it may be amended, modified or renewed. If necessary in order to comply with applicable Federal, State or City laws, rules or regulations or with its Franchise Agreement, the Company may immediately cancel this Agreement without further obligation. The Company shall advise Client in writing of any notification set forth in this paragraph it receives, as soon as practicable.

B. This Agreement, its interpretation, performance or any breach thereof, shall be governed by the laws of the State of New York, and any claims arising hereunder shall be brought in a court located in the County and City of New York.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto, contains the full understanding of the parties with respect to the subject matter hereof and supersedes all previous agreements promises, proposals, representations, understandings, and negotiations, whether written or oral, between the parties, respecting the subject matter hereof.

XII. HEADINGS

Headings used in this Agreement are for reference only and shall not be deemed part of this Agreement.

[TIME WARNER CABLE OF  
NEW YORK CITY,  
a division of Time Warner  
Entertainment Company, L.P.]

[PARAGON CABLE MANHATTAN]

CLIENT: \_\_\_\_\_

BY: \_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Title (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT 4**



THE CITY OF NEW YORK  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
75 Park Place, 6th Floor  
New York, New York 10007

William F. Squadron  
Commissioner

Telephone: (212) 788-6540  
Facsimile: (212) 788-6551

November 18, 1992

Richard Aurelio  
President  
Time Warner New York City Cable Group  
Time-Life Building, Rockefeller Center  
New York, New York 10020

Re: Bulk Rate Proposal

Dear Mr. Aurelio:

Pursuant to Section 5.4 of the 1990 franchise agreements, the Manhattan system of Time Warner Cable of New York City ("MCTV") and Paragon Cable Manhattan ("Paragon") may only enter into bulk rate pricing arrangements in the provision of cable television services if such arrangements are in conformance with a written plan submitted to and approved by the City's Commissioner of the Department of Telecommunications and Energy ("DTE"). By letter dated October 10, 1992 you submitted for MCTV and Paragon an Amended Bulk Rate proposal, revising previous proposals in response to concerns raised by DTE. DTE has reviewed the October 10 proposal and has determined that, provided MCTV and Paragon accept and agree to certain changes and additions to that proposal which are specified below, such proposal, as thus amended, is designed to meet the public interest and is approved for implementation.

The franchise agreement restrictions on bulk rate arrangements reflect concerns that such arrangements may create unfair pricing distinctions to the advantage of a small number of subscribers, and might allow non-franchised building owners to profit inappropriately by "marking up" cable fees.

However, DTE has found that the October 10 proposal, as amended as required below, would make available a discounted price option for cable service to a substantial portion of the multiple dwelling buildings in Manhattan, in neighborhoods throughout the borough, and that such proposal contains substantial protections against inappropriate mark-ups of cable prices. DTE has also found that the proposed bulk rate programs, as amended, may facilitate completion of the current cable upgrade program, reduce illegal theft of cable service, improve the ability of MCTV and Paragon to provide prompt service repairs, reduce the incidence of service problems, and improve video signal quality by reducing theft related signal leakage. DTE has also found that bulk rate programs of the type proposed are widespread in urban areas in the United States and have proven to be in the public interest.

For the foregoing reasons, DTE finds that the October 10 proposal, with the changes set forth below, will enhance the public interest and is therefore approved, provided that MCTV and Paragon agree to the changes set forth below by countersigning a copy of this letter in the spaces designated and returning an original countersigned copy.

The changes to the October 10 proposal that Paragon and MCTV must agree to prior to this approval becoming effective are as follows:

(1) The eligibility threshold of 20 units which was proposed in the October 10 letter must be reduced to 15 units. That is, the bulk rate option must be offered to all buildings in the franchise area that contain fifteen or more units.

(2) No less than ten business days before sending out the notices in the form of Exhibit C attached to your October 10 proposal, MCTV and Paragon will offer DTE the opportunity to provide an accompanying letter from DTE to building owners, and if DTE opts to provide such a letter, MCTV and Paragon will include such a letter in its distribution of the Exhibit C notice.

(3) No bulk rate agreement shall extend beyond the end of Paragon and MCTV's current franchise period. Thus, any bulk rate agreements which may be entered into after September 30, 1993 must expire no later than September 30, 1998, notwithstanding the maximum five year term provided in Section IX of your proposed bulk billing agreement. At the end of the current franchise period the City will review the bulk rate program to determine whether the continuation of bulk rates remains in the public interest, or whether modifications or termination is appropriate.



(4) Notwithstanding footnote 3 on page 1 of the proposed bulk billing agreement, which covers installation charges, under no circumstances may the installation charge per unit for any bulk building that has not previously had cable service exceed the company's then-prevailing standard installation charge for residential units. This maximum charge for installation shall apply regardless of the "Company's cost of labor and materials" referred to in footnote 3.

(5) On March 1, 1993, and on March 1 of every year thereafter through March 1, 1998, MCTV and Paragon will each submit a report to DTE listing all buildings with which it had a current bulk rate agreement as of December 31 of the preceding year. Such report will specify, for each agreement, the term of the agreement, the building address, the number of units in the building, the tier of bulk service provided, the form of ownership of the building (rental, condominium, cooperative), any installation charges imposed at the building and any other relevant information DTE may request.

Subject to acceptance of the preceding changes, the October 10, 1992 bulk rate proposal is hereby approved, effective immediately.

Yours truly,



Bill Squadron

The conditions set forth are accepted and agreed to:

Manhattan Cable Television

By: \_\_\_\_\_

Paragon Cable Manhattan

By: \_\_\_\_\_

**EXHIBIT 5**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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TURNER BROADCASTING SYSTEM, INC., : Civil Action Nos. 92-2247  
Plaintiff, : 92-2292  
- against - : 92-2494  
: 92-2495  
: 92-2558

FEDERAL COMMUNICATIONS COMMISSION, :  
et al., :  
Defendants. :

- - - - -X

AND CONSOLIDATED CASES :

- - - - -X

AFFIDAVIT OF PETER O. PRICE  
ON BEHALF OF AMICUS CURIAE  
LIBERTY CABLE COMPANY, INC.

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

PETER O. PRICE, being duly sworn, deposes and says:

1. I am the President of Liberty Cable Company, Inc. ("Liberty"). I make this affidavit (a) in support of the motion by Liberty for leave to appear as an amicus curiae in these consolidated cases and (b) in opposition to the motions of Plaintiff Time Warner Entertainment Company, L.P. ("Time Warner") and other plaintiffs in these consolidated actions, to the extent they seek a preliminary injunction against Section 19 ("Section 19") of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act").

2. Liberty seeks to appear as amicus curiae in these actions because Time Warner and others are seeking to enjoin Section 19 of the 1992 Cable Act. This section, including the regulations and procedures to be established under the section, is designed to foster competition in the cable industry -- and more specifically to provide recourse to businesses, such as Liberty, against anti-competitive barriers mounted by vertically integrated cable operators and programmers, such as Time Warner. As detailed below, Section 19 is not only constitutional, it is a desperately needed legislative response to the serious anti-competitive and unfair practices existing in the cable industry.

Liberty's Perspective On Section 19

3. Liberty is a satellite master antenna television ("SMATV") operator in the City of New York, where it currently services approximately 7,000 subscribers at dozens of sites in the metropolitan area. Liberty's franchised competitor in New York is Time Warner, which dominates the cable market in Manhattan through Manhattan Cable Television and Paragon Cable in Manhattan and in the outer boroughs through B-Q Cable, QUICS and Staten Island Cable. New York City is the largest municipal franchisor of cable operators in the nation, and Time Warner serves more than 90% of the subscribers in New York City as well as customers outside the New York metropolitan area.

4. On a national level, Liberty is a leading implementer of technological alternatives to cable. To the best

of Liberty's knowledge, it is the only SMATV company in the country successfully overbuilding and competing head to head with a local franchised cable company. Liberty has built the largest 18 ghz microwave network in the United States and delivers its signal to many buildings via terrestrial microwave. Liberty will also be among the first video programmers in the United States to test "video dialtone" service and technology beginning in 1993. These emerging technologies have been heralded widely in the press. One of Section 19's primary and express aims is to ensure that businesses pursuing such new technologies will be able to compete fairly with entrenched cable operators, through reduction of the barriers imposed by vertical integration of cable operators and programmers.

B. The Injury That A Preliminary Injunction  
Against Section 19 Will Precipitate

5. If Section 19 is enjoined during these proceedings, it will prevent the FCC from considering public comment and from fashioning regulations that respond to the substantial economic goals that underlie the implementing legislation within the 180 day period mandated by statute. Liberty intends to participate with many other interested parties in that regulatory rule-making process, and expects Time Warner and the other plaintiffs to do the same. The Court should not allow Time Warner and the others seeking to enjoin Section 19 to delay this rule-making process.

6. Liberty is suffering injury on a daily basis. If Time Warner and others succeed in persuading this Court to grant a preliminary injunction, Liberty and others will continue to suffer real injury. This injury is not hypothetical. For example, cable companies owned or controlled by Time Warner now force Liberty to pay more than others for the same programming services. There is no apparent reason for this price discrimination other than the fact that Liberty is an SMATV company and a Time Warner competitor. This higher pricing has made it more difficult for Liberty to compete effectively with Time Warner. Liberty expects that Time Warner's anti-competitive conduct will be corrected by Section 19 and regulations promulgated thereunder and, on the other hand, will continue if Section 19 is enjoined.

7. In addition, Time Warner allows programming such as Court TV, which is produced by an affiliate of Time Warner, to be sold to all other cable and SMATV companies in the United States, but not Liberty. Indeed, Liberty's frustrated efforts to secure programming from Court TV are a prime example of the abuses of exclusive contracts that Section 19 would correct. In a discussion I had earlier this month with Steven Brill, the President of Court TV, Mr. Brill stated that Court TV's partner, Time Warner, wanted an exclusive in the New York market for its affiliates, Manhattan Cable and Paragon, and that Court TV "reluctantly" had agreed to Time Warner's request. Mr. Brill stated that he believed it was in Court TV's best interest to

sell to anyone who wanted the programming and to do so at the same price for all customers, but that Time Warner had imposed a contrary policy on Court TV. Thus, notwithstanding my discussions with Court TV over a long period of time, Liberty has been unable to obtain Court TV programming due to the pressures and exclusive arrangements brought to bear by Time Warner upon Court TV.

8. Liberty has been singled out for discriminatory treatment in the sale of Court TV solely because it competes directly, head to head, with Time Warner at its largest cable operation in New York City. Once again, Liberty expects this anti-competitive practice will be corrected through Section 19 regulations, and, on the other hand, will continue for so long as Section 19 is enjoined.

9. The existing antitrust laws do not provide an effective or meaningful remedy for a small company like Liberty due to the time and cost of pursuing an antitrust claim against a corporate giant like Time Warner. Liberty expects that rules promulgated under Section 19 will specifically target pernicious behavior in the cable industry in a clear-cut way that will deter Time Warner's misconduct without protracted litigation, or at least provide an opportunity for improprieties to be remedied more cheaply and quickly through the expedited adjudicatory review required by Section 19.

C. Time Warner's Unclean Hands Counsel Against Preliminary Injunctive Relief

10. Before awarding any preliminary injunction against Section 19, the Court should also consider whether Time Warner is entitled to equitable relief from this Court in light of its history of inequitable behavior. In addition to discriminating in the sale of its programming, Time Warner has also engaged in an extensive harassment campaign directed against Liberty. This harassment is designed and intended to slow down the introduction of Liberty service in New York City, and ultimately to drive Liberty out of business in New York City.

11. Examples of Liberty's complaints and complaints of others who have been penalized for changing service from Time-Warner are annexed hereto as Exhibits A-F. These exhibits set forth specific facts about the Time Warner harassment campaign in New York, including (a) threats by Manhattan Cable to shred the cables of Liberty customers and defamatory letters sent by Manhattan Cable to Liberty customers (see my letter to William Squadron dated February 7, 1992 annexed as Exhibit A); (b) the harassment of Liberty's customers, employees and prospective employees by the Time Warner cable companies, and tampering with Liberty equipment (see my letters to William Squadron dated June 16, 1992, July 10, 1992 and July 17, 1992 annexed as Exhibits B, C and D); (c) harassment through abusive billing practices of former Manhattan Cable subscribers who switch to Liberty's service (see letter from Dina Fatigato to William Squadron dated July 17, 1992 annexed as Exhibit E, and W. James MacNaughton to



William Squadron dated October 1, 1992 annexed as Exhibit F); and (d) Time Warner's exclusionary arrangements precluding the sale of Court TV programming to Liberty (see Exhibit B).

12. Liberty has complained to the New York City Department of Telecommunications and Energy (the "Department"), the City agency which regulates Time Warner cable operations in New York City, regarding this harassment campaign. The Department has advised Liberty that it is conducting an investigation of this harassment campaign and will issue a written report. The Department has also advised Liberty that the report has been delayed due to the refusal of Time Warner to cooperate with the Department's investigation. In the proceeding before this Court, the City of New York has moved to appear as amicus curiae to support the 1992 Cable Act, and to oppose Time Warner on the motions for preliminary injunction.

13. A preliminary injunction against Section 19 will have the practical effect of slowing down the rule-making and adjudicatory process authorized by Section 19, and allowing Time Warner and others to continue reaping illicit profits and unfairly diverting business opportunities from competitors such as Liberty. Having lost their "political battle" in Congress, Time Warner and other vertically integrated cable operators should not be permitted to continue to pursue their anti-competitive economic agenda. Nor should these businesses be

permitted by the Court to advance their injurious economic agenda  
under the veil of the First Amendment.



PETER O. PRICE

Sworn to before me this  
17<sup>th</sup> day of December, 1992.

Deborah Bias  
Notary Public

DEBORAH BIAS  
Notary Public, State of New York  
No. 4992580  
Qualified in Suffolk County  
Commission Expires February 24, 1994